

## Message Text

UNCLASSIFIED

PAGE 01 BERLIN 00936 01 OF 02 051734Z

47

ACTION L-03

INFO OCT-01 EUR-25 ISO-00 JUSE-00 CIAE-00 INR-10 NSAE-00

RSC-01 DRC-01 /041 W

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R 051655Z JUN 74

FM USMISSION BERLIN

TO SECSTATE WASHDC 3474

UNCLAS SECTION 1 OF 2 BERLIN 0936

E.O. 11652: N/A

TAGS: PGOV WB GW

SUBJECT: BERLIN DEMOCRATIC CLUB VS SCHLESINGER

REF: STATE 116754

1. TEXT OF LAW 46, AS REQUESTED REFTTEL, TRANSMITTED  
PARA 2. DEPARTMENT'S UNDERSTANDING IS CORRECT. LAW 46  
WAS PROMULGATED IN APRIL 1955 TO PROVIDE LEGAL BASIS,  
IF NEEDED, FOR SUCCESSOR IN BERLIN TO OLD U.S. HIGH  
COMMISSIONER'S COURT, WHICH WAS CLOSED DOWN WITH ENTRANCE  
INTO FORCE OF RELATIONS TREATY WITH FRG FOLLOWING MONTH.  
ITS MAIN PROVISIONS AT LEAST HAVE NEVER BEEN ACTIVATED.  
NO JUDGE HAS EVER BEEN APPOINTED AND COURT HAS NEVER MET.  
FILES INDICATE LEGAL ADVISERS KERRY (1955), PENBERTHY  
(1956) AND SMALL (1972) WERE AUTHORIZED BY USCOB, PURSUANT  
TO LAW 46, TO PERFORM CERTAIN JUDICIAL FUNCTIONS, INCLUDING  
"TO ISSUE WARRANTS OF ARREST AND FOR SEARCH AND SEIZURE,  
TO COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION  
OF DOCUMENTS, TO ADMIT TO BAIL (EXCEPT IN THE CASE OF  
MURDER) TO ADMINISTER OATHS AND TO COMMIT FOR TRIAL."  
OUR RECORDS DO NOT INDICATE WHETHER THIS AUTHORITY WAS  
EVER EXERCISED.

2. BEGIN TEXT:

"OFFICE OF THE U.S. HIGH COMMISSIONER FOR GERMANY

BERLIN ELEMENT

(UNITED STATES SECTOR)

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PAGE 02 BERLIN 00936 01 OF 02 051734Z

LAW NO. 46

UNITED STATES COURT FOR BERLIN

THE UNITED STATES HIGH COMMISSIONER ENACTS AS FOLLOWS:

ARTICLE 1

UNITED STATES COURT

A UNITED STATES COURT FOR BERLIN (HEREIN REFERRED TO AS "THE COURT") IS HEREBY ESTABLISHED FOR THE UNITED STATES SECTOR OF BERLIN.

ARTICLE 2

PERSONNEL

1. THE COURT SHALL BE COMPOSED OF ONE OR MORE UNITED STATES JUDGES FOR BERLIN. ANY SUCH JUDGE MAY SIT AS THE UNITED STATES COURT FOR BERLIN.

2. A UNITED STATES ATTORNEY FOR BERLIN SHALL BE RESPONSIBLE FOR THE PROSECUTION OF ALL CASES IN THE "COURT.

3. A CLERK-MARSHAL OF THE UNITED STATES COURT FOR BERLIN SHALL BE AUTHORIZED TO AUTHENTICATE DOCUMENTS, TO AFFIX THE SEAL OF THE COURT, TO ADMINISTER OATHS, TO SUMMON WITNESSES AND TO ENFORCE THE ORDERS OF THE COURT.

4. UNITED STATES JUDGES FOR BERLIN AND THE UNITED STATES ATTORNEY FOR BERLIN SHALL TAKE THE FOLLOWING OATH BEFORE PERFORMING THE DUTIES OF THEIR RESPECTIVE OFFICES:

'I SWEAR (OR AFFIRM) THAT I WILL AT ALL TIMES ADMINISTER JUSTICE WITHOUT FEAR OR FAVOR TO ALL PERSONS OF WHATEVER CREED, RACE, COLOR, OR POLITICAL OPINION THEY MAY BE, THAT I WILL DO EQUAL RIGHT TO THE POOR AND TO THE RICH AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE AND PERFORM ALL THE DUTIES INCUMBENT UPON ME AS..... ACCORDING TO LAW AND TO THE BEST OF MY ABILITIES AND UNDERSTANDING (SO HELP ME GOD)'.  
THE UNITED STATES COMMANDER BERLIN SHALL ADMINISTER THE OATH.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 BERLIN 00936 01 OF 02 051734Z

5. THE PERSONNEL DESCRIBED IN PARAGRAPHS 1 TO 3 SHALL BE APPOINTED BY THE CHIEF OF MISSION, WHO MAY TERMINATE SUCH APPOINTMENT AT ANY TIME. AS USED IN THIS LAW THE TERM "CHIEF OF MISSION" MEANS THE UNITED STATES HIGH COMMISSIONER FOR GERMANY AS WELL AS THE CHIEF OF THE UNITED STATES DIPLOMATIC MISSION IN GERMANY.

ARTICLE 3  
JURISDICTION

1. SUBJECT TO THE PROVISIONS OF PARAGRAPH 2 THE COURT SHALL HAVE ORIGINAL JURISDICTION TO HEAR AND DECIDE ANY CRIMINAL CASE ARISING UNDER ANY LEGISLATION IN EFFECT IN THE UNITED STATES SECTOR OF BERLIN.

2. MILITARY, NAVAL OR AIR FORCE PERSONNEL OF THE ARMED FORCES OF THE UNITED STATES SHALL NOT BE BROUGHT TO TRIAL FOR ANY OFFENSE IN OR BE SUBJECT TO THE POWERS OF THE COURT EXCEPT UPON THE AUTHORIZATION OF THE COMMANDER-IN-CHIEF, UNITED STATES ARMY, EUROPE.

3. THE COURT MAY IMPOSE ANY PENALTY WHICH IS AUTHORIZED BY ANY LAW UNDER WHICH THE ACCUSED IS CONVICTED.

4. IN ADDITION TO OR IN LIEU OF ANY POWER OF SENTENCE HEREIN AUTHORIZED, THE COURT SHALL MAKE SUCH ORDER AS IS AUTHORIZED BY LAW:

(A) CONCERNING ANY PROPERTY OR BUSINESS INVOLVED IN AN OFFENSE; OR

(B) CONCERNING THE PERSON OF THE ACCUSED.

5. SUBJECT TO THE PROVISIONS OF PARAGRAPH 2 ANY UNITED STATES JUDGE FOR BERLIN SHALL HAVE POWER TO ADMINISTER OATHS, TO PUNISH FOR CONTEMPT OF COURT "(WHETHER OR NOT COMMITTED IN THEIR PRESENCE), TO COMPEL THE ATTENDANCE OF WITNESSES AND ORDER THEIR DETENTION, TO COMPEL THE PRODUCTION OF DOCUMENTS, UNCLASSIFIED

UNCLASSIFIED

PAGE 04 BERLIN 00936 01 OF 02 051734Z

TO TAKE DEPOSITIONS AND TO ISSUE COMMISSIONS FOR THE TAKING THEREOF, TO ISSUE WARRANTS OF ARREST AND FOR SEARCH AND SEIZURE, TO ADMIT TO BAIL, TO COMMIT FOR TRIAL, TO ESTABLISH CONSISTENTLY WITH APPLICABLE LEGISLATION RULES OF PRACTICE AND PROCEDURE, AND TO EXERCISE ALL OTHER POWERS INCIDENTAL TO THE PERFORMANCE OF JUDICIAL FUNCTIONS. ANY UNITED STATES JUDGE FOR BERLIN SHALL HAVE POWER TO ACT ON APPLICATIONS FOR RELEASE FROM CONFINEMENT.

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PAGE 01 BERLIN 00936 02 OF 02 051749Z

47

ACTION L-03

INFO OCT-01 EUR-25 ISO-00 JUSE-00 CIAE-00 INR-10 NSAE-00

RSC-01 DRC-01 /041 W

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R 051655Z JUN 74

FM USMISSION BERLIN

TO SECSTATE WASHDC 3475

UNCLAS FINAL SECTION OF 2 BERLIN 0936

6. A RECORD SHALL BE MADE AND KEPT OF ALL PROCEEDINGS BEFORE THE COURT. FINDINGS OF FACT AND CONCLUSIONS OF LAW SHALL BE MADE IN ALL CASES DECIDED BY THE COURT EXCEPT IN CASES IN WHICH A PLEA OF GUILTY HAS BEEN ACCEPTED.

7. THE COURT SHALL HAVE THE POWER TO MODIFY OR AMEND ITS FINDINGS, SENTENCE OR JUDGMENT, AND TO ORDER A NEW TRIAL IF REQUIRED IN THE INTEREST OF JUSTICE. A MOTION FOR A NEW TRIAL BASED ON THE GROUND OF NEWLY-DISCOVERED EVIDENCE SHALL BE MADE NOT LATER THAN TWO YEARS AFTER FINAL JUDGMENT. A MOTION FOR A NEW TRIAL BASED ON ANY OTHER GROUND SHALL BE MADE WITHIN FIVE DAYS AFTER JUDGMENT OR WITHIN SUCH FURTHER "TIME AS THE COURT MAY FIX DURING THE FIVE-DAY PERIOD. THE COURT MAY CORRECT AN ILLEGAL SENTENCE AT ANY TIME AND MAY REDUCE A SENTENCE WITHIN SIXTY DAYS AFTER SENTENCE IS IMPOSED. CLERICAL MISTAKES IN JUDGMENTS, ORDERS OR OTHER PARTS OF A RECORD AND ERRORS IN THE RECORD ARISING FROM OVERSIGHT OR OMISION MAY BE CORRECTED BY THE COURT AT ANY TIME AND AFTER SUCH NOTICE, IF ANY, AS THE COURT ORDERS.

ARTICLE 4

PROCESS

PROCESS, WHICH SHALL INCLUDE SUMMONS, SUBPOENA AND OTHER WRITS PROVIDED FOR ISSUANCE BY THE COURT, SHALL BE IN SUCH FORM AS ANY UNITED STATES JUDGE FOR BERLIN MAY PRESCRIBE AND SHALL RUN THROUGHOUT THE

UNCLASSIFIED

PAGE 02 BERLIN 00936 02 OF 02 051749Z

UNITED STATES SECTOR OF BERLIN.

ARTICLE 5

REVIEW OF DECISIONS

1. ANY DEFENDANT MAY PETITION THE CHIEF OF MISSION TO REVIEW THE CONVICTION OR SENTENCE PRONOUNCED BY THE COURT OR BOTH. SUCH PETITION SHALL BE FILED WITHIN THIRTY DAYS FROM THE ENTRY OF THE FINAL ORDER OR WITHIN SUCH EXTENDED TIME AS THE CHIEF OF MISSION MAY ALLOW.

2. UPON SUCH REVIEW, THE CHIEF OF MISSION MAY AFFIRM, VACATE OR MODIFY THE FINDINGS, JUDGMENT OR "SENTENCE OF THE COURT IN WHOLE OR IN PART AND MAY ORDER A NEW TRIAL. HE MAY REFER THE PETITION TO A BOARD TO ADVISE HIM ON THE MATTER.

ARTICLE 6

CASES REMOVED OR TRANSFERRED FROM GERMAN COURTS

1. POWER CONFERRED UPON THE COURT UNDER THIS LAW MAY BE EXERCISED BY THE COURT IN ANY CASE REMOVED, TRANSFERRED OR REFERRED TO THE COURT UNDER THE PROVISIONS OF ALLIED KOMMANDATURA LAW NO. 7. IN ANY CASE SO TRANSFERRED FROM A GERMAN COURT THE COURT MAY SUSPEND FOR A DEFINITE PERIOD OR AN INDEFINITE PERIOD, DECLARE NULL AND VOID OR INVALIDATE AS OF ANY DATE, IN WHOLE OR IN PART, ANY PROCEEDINGS, RULINGS OR JUDGMENTS OF THE GERMAN COURT AND MAY PROCEED, DE NOVO OR OTHERWISE, WITH TRIAL, ADJUDICATION OR OTHER APPROPRIATE DISPOSITION OF SUCH CASE.

2. THE COURT SHALL HAVE IN ANY CASE REMOVED, REFERRED OR TRANSFERRED TO THEM FROM A GERMAN COURT, IN ADDITION TO THE JURISDICTION OTHERWISE CONFERRED BY THIS LAW, ALL JURISDICTION OVER PERSONS AND SUBJECT MATTER WHICH, UNDER GERMAN LAW, THE GERMAN COURT IN WHICH THE CASE WAS ORIGINALLY INSTITUTED WOULD HAVE HAD BUT FOR THE PROVISIONS OF ALLIED KOMMANDATURA LAW NO. 7 AND THE EXERCISE OF POWERS THEREUNDER. IN ADDITION, THE COURT SHALL HAVE THE POWER TO DETERMINE THE "JURISDICTION OF THE GERMAN COURT OVER PERSONS AND UNCLASSIFIED

UNCLASSIFIED

PAGE 03 BERLIN 00936 02 OF 02 051749Z

SUBJECT MATTER IN THE CASE SO REMOVED.

ARTICLE 7

REPEALS AND TRANSITIONAL PROVISIONS

1. UNITED STATES HIGH COMMISSIONER LAW NO. 20 IS HEREBY REPEALED, WITHIN THE UNITED STATES SECTOR OF BERLIN, PROVIDED THAT THIS REPEAL SHALL NOT AFFECT

THE DISPOSITION OF ANY CASE PENDING ON THE EFFECTIVE  
DATE OF THIS LAW IN A COURT ESTABLISHED BY LAW NO.20.

2. ALL RECORDS, PROCESS, OTHER DOCUMENTS AND RULES  
REQUIRED FOR THE ADMINISTRATION OF JUSTICE SHALL,  
UNTIL A UNITED STATES JUDGE FOR BERLIN DIRECTS  
OTHERWISE, AND EXCEPT TO THE EXTENT HE SO DIRECTS, BE,  
MUTATIS MUTANDIS, IN SUCH FORM AS HAVE HERETOFORE  
BEEN REQUIRED FOR OR IN USE IN THE UNITED STATES  
COURT OF THE ALLIED HIGH COMMISSION FOR GERMANY.

ARTICLE 8

EFFECTIVE DATE AND AREA OF APPLICABILITY

THIS LAW IS APPLICABLE IN THE UNITED STATES SECTOR  
OF BERLIN AND SHALL BECOME EFFECTIVE ON THE DATE OF  
ITS SIGNATURE.

DONE AT BAD GODESBERG, ON APRIL 28, 1955.

JAMES B. CONANT

UNITED STATES HIGH COMMISSIONER FOR GERMANY."

END TEXTBORG

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## Message Attributes

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